Federal Court  Cour fédérale

Date: 20221212

Docket: IMM-1177-20

Citation: 2022 FC 1713

Ottawa, Ontario, December 12, 2022

PRESENT: The Honourable Madam Justice Elliott

BETWEEN:

OLUSOLA AKINBOLA GLOVER
OLUFUNKE MARY GLOVER
OLUWAFIREFUNMI SAMUEL GLOVER (MINOR)
OLUWAFEYIFUNMI ISRAEL GLOVER (MINOR)
OLUWAFAYOFUNMI PRINCESS ELSIE GLOVER (MINOR)

Applicants

and

THE MNISTER OF CITIZENSHIP AND IMMIGRATION

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicants are a family of five, a father (PA), his wife, and three minor children. They are citizens of Nigeria who seek to overturn the decision made by the Refugee Appeal

Division (RAD) on January 17, 2020 that confirmed the decision of the Refugee Protection Division (RPD) that the Applicants are neither Convention Refugees nor persons in need of protection [Decision].

[2] The Applicants fear persecution from members of the PA's ancestral community in Ondo State, Nigeria, because of his refusal to become the next chief priest of the traditional tribal deity known as Boabo. The agents of persecution allegedly threatened to perform Female Genital Mutilation (FGM) on the PA's daughter and attempted to kidnap the minor children from school.

II. **Decision**

[3] The RAD properly acknowledged that the standard of correctness applied to their review of the RPD decision and that it was required to make an independent assessment of the claims to determine whether the RPD was correct in its findings and determinations.

[4] The RAD reviewed the entire record that was before the RPD and listened to the audio recording of the RPD hearing. It found that the RPD did not enjoy a meaningful advantage over the RAD in making findings of fact or mixed fact and law.

[5] The determinative issue before the RAD was the existence of an internal flight alternative (IFA) in Ibadan. The RPD had proposed both Ibadan and Port Harcourt as potential IFAs. The RAD focussed their analysis on Ibadan "since only a single viable IFA is all that is required to determine a claim for protection".

[6] The RAD found the RPD had applied the wrong standard when it sought ‘definitive proof’ regarding whether the Applicants could be found in either of the IFA’s proposed by the RPD. The RAD therefore reviewed the evidence afresh.

[7] The RAD noted that the PA had specifically been asked by the RPD whether there was any evidence in support of the claim that the Applicants could be found anywhere in Nigeria through their biometric validation numbers (BVN). The PA’s answer to the RPD was that he did not have any such evidence.

[8] Counsel for the PA relied on the general evidence of corruption in the National Documentation Packages for Nigeria. The RAD found the general evidence did not establish, on a balance of probabilities, that the persecutors could obtain the personal information of the Applicants and locate them in Ibadan.

III. **Issues**

[9] The Applicants raise three issues:

1. Having found the RPD erred in law, did the RAD err in failing to set aside the RPD decision?
2. Did the RAD err in applying the Jurisprudential Guide for Nigeria?
3. Did the RAD err in finding it was reasonable for the Applicants to seek refuge in Ibadan?

IV. **Standard of Review**

[10] The Supreme Court of Canada has established that when conducting judicial review of the merits of an administrative decision, other than a review related to a breach of natural justice and/or the duty of procedural fairness, the presumptive standard of review is reasonableness: *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 23. While this presumption is rebuttable, no exception to the presumption is present here.

[11] The focus of reasonableness review must be on the decision actually made by the decision maker, including both the decision maker's reasoning process and the outcome. The role of courts in these circumstances is to review, and at least as a general rule, to refrain from deciding the issue themselves: *Vavilov* at para 83.

[12] The decision maker may assess and evaluate the evidence before it. Absent exceptional circumstances, a reviewing court will not interfere with its factual findings. The reviewing court must refrain from "reweighing and reassessing the evidence considered by the decision maker": *Vavilov* at para 125.

V. **Analysis**

A. *The RAD did not err in refusing to set aside the RPD decision*

[13] The Applicants submit that the "paramount issue" is that the role of the RAD was to assess whether the RPD made an error of law and if an error was found, the RAD had to set aside the Decision and remit it back to the RPD.

[14] The Applicant is wrong in law. The Federal Court of Appeal determined in *Canada (Citizenship and Immigration) v Huruglica*, 2016 FCA 93, [*Huruglica*] at paragraph 103, that after carefully considering the RPD decision the RAD is to provide a final determination, by either confirming the RPD decision or setting it aside and substituting its own determination of the merits of the refugee claim.

[15] Having found the RPD did not enjoy a meaningful advantage over the RAD, the RAD's decision to substitute its own determination of the merits of the claim is not an error as it complies with *Huruglica*.

B. *The RAD did not err when it considered the Jurisprudential Guide*

[16] The Applicant argues that the RAD erred by relying on the revoked Nigerian Jurisprudential Guide (JG) when assessing the viability and reasonableness of the two proposed IFA locations.

[17] The Respondent notes that at the time of the Decision, the JG had not been revoked.

[18] The RAD refers to the JG but does not rely on it or adopt the wording from it. The RAD notes that the JG identifies six possible IFA locations in central and southern Nigeria, one of which is Ibadan. The RAD did not err in noting that fact.

[19] The RAD also referred to the JG to set out the most common and pertinent issues to be reviewed when determining whether a particular IFA is reasonable for a specific claimant. I see no error by the RAD in referring to the issues identified in the JG.

[20] The RAD later notes that the JG "observes that rent is steep in large Nigerian cities such as Ibadan". The RAD considers that information in light of the Applicants' ability to secure employment and the evidence in the NDP that "accommodation is a 'major obstacle' if the person is not 'financially strong.'''

[21] At no point in the Decision did the RAD adopt the reasoning in the JG. The RAD did not adopt the factual findings of the JG. It made independent findings based on the evidence and it provided its own reasons for concluding Ibadan would be a viable IFA.

[22] Having reviewed the underlying record and considering the Decision, I find the Applicants have not met their onus to show the RAD erred in considering the factors in the JG.

C. *The RAD did not err in concluding that it was reasonable for the Applicants to relocate to Ibadan*

[23] The Applicants assert that the RAD erred in assessing the reasonableness of Ibadan as an IFA by inadequately considering a number of factors, including their risks as non-indigenes. However, the RAD clearly considered the Applicants' submissions on this point at paragraph 26 of its decision, finding that the documentary evidence failed to establish that relocation to Ibadan would be "unreasonable or unduly harsh". In support of this conclusion, the RAD cited portions of the NDP, which stated that in most cosmopolitan and urban Nigerian cities, issues of indigeneity are "nonexistant (*sic*) and it is mostly at the local government level, in the 'political arena,' and particularly when it comes to sharing resources, that indigeneity becomes an issue." The RAD undertook a similar analysis based on the complete profile of the Applicants', including gender, education, employment, travel, and accommodation. While the Applicants may disagree, it is not for this Court to reweigh and reassess the evidence. I find that the impugned portions of the Decision are justified in light of the legal and factual constraints that were before the RAD.

[24] The Applicants also claim that the "sole or main reason for rejecting the Applicants' story and or explanation regarding the lack of availability of an IFA in either Port Harcourt or Ibadan was that the Applicants did not provide a 'definitive proof' or that they had failed to provide 'any evidence' that they could be tracked down to the identified IFA locations."

[25] This is not accurate. The reason for rejecting the Applicants' explanation was due to the discrepancy between the PA's Basis of Claim narrative and his oral testimony regarding the resources of the agents of persecution.

[26] In *Ranganathan v Canada (Minister of Citizenship and Immigration)*, [2001] 2 FC 164, [*Ranganathan*] the Federal Court of Appeal established that there is "a very high threshold for the unreasonableness test" which "requires nothing less than the existence of conditions which would jeopardize the life and safety of a claimant . . . [and] actual and concrete evidence of such conditions." *Ranganathan* at para 15.

[27] The Applicants have not shown that they met the threshold.

VI. **Conclusion**

[28] For all the reasons set out above, this Application is dismissed.

[29] No serious question of general importance was posed by either party and I find one does not exist on these facts.

JUDGMENT in IMM-1177-20

THIS COURT'S JUDGMENT is that:

1. The application is dismissed.

2. There is no question for certification**.**

"E. Susan Elliott"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	IMM-1177-20
STYLE OF CAUSE:	OLUSOLA AKINBOLA GLOVER, OLUFUNKE MARY GLOVER, OLUWAFIREFUNMI SAMUEL GLOVER (MINOR), OLUWAFEYIFUNMI ISRAEL GLOVER (MINOR), OLUWAFAYOFUNMI PRINCESS ELSIE GLOVER (MINOR) v THE MNISTER OF CITIZENSHIP AND IMMIGRATION
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APPEARANCES:

Richard Odeleye	FOR THE APPLICANTS
Nick Continelli	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Richard Odeleye Barrister and Solicitor North York, Ontario	FOR THE APPLICANTS
Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT